

Testimony for HB2238 on 2/27/2012 2:05:00 PM

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Sent: Thursday, February 23, 2012 7:53 PM

To: CPCtestimony

Cc: Brenda.Kosky@gmail.com

Testimony for CPC 2/27/2012 2:05:00 PM HB2238

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Brenda Kosky

Organization: Individual

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Submitted on: 2/23/2012

Comments:

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TO: Representative Robert N. Herkes
Chair, Committee on Consumer Protection & Commerce
Via Email: CPCtestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin

DATE: February 26, 2012

RE: **H.B. 2238, Proposed HD1 – Relating to Motor Vehicles**
Hearing Date: Monday, February 27, 2012 at 2:05 p.m.
Conference Room 325

Attached is testimony on H.B. 2238, Proposed HD1, Relating to Motor Vehicles, from the
Alliance of Automobile Manufacturers.

The Alliance is **strongly opposed** to H.B. 2238, Proposed HD1, which would prohibit manufacturer recovery of increased warranty reimbursement to dealers. The bill appears to attempt to address a dispute between a single automobile manufacturer and an automobile dealer. The impacts of a legislative solution to this dispute would be very high and impact the entire automobile manufacturing industry, as well as harm consumers. In addition, we believe the bill is unconstitutional -- a similar law is already the subject of ongoing litigation in Florida.

This bill addresses the rates at which automobile manufacturers compensate dealers for parts that they use to repair vehicles under a manufacturer's warranty. Dealers routinely buy parts from the manufacturer. When a dealer uses those parts to fix a vehicle under warranty, the manufacturer reimburses the dealer for the cost of those parts and then pays an additional surcharge to the dealer. H.B. 2238, Proposed HD1 would bar manufacturers from any recovery of increased warranty reimbursement to dealers.

1. A single dispute does not warrant legislation.

The Alliance believes that H.B. 2238, Proposed HD1 does not address an industry-wide problem. We believe it is a dispute over warranty reimbursements between one automobile dealer and a single automobile manufacturer that the Alliance does not represent. H.B. 2238, Proposed HD1, which is a proposed legislative fix to resolve a dispute with a single manufacturer, would burden the entire automobile manufacturing industry with a very expensive and unfair cost. Legislation is not the best way to resolve this controversy.

2. H.B. 2238, Proposed HD1 would increase costs and harm consumers.

H.B. 2238, Proposed HD1 would negatively impact consumers because it will reduce incentives and increase prices. If a manufacturer is required to internalize all of its costs for warranty repairs, it would have to find a way to absorb that by looking at other programs, including its incentive program. Pressure against incentives is bad for all participants in the auto industry -- including manufacturers, dealers, and consumers. If a manufacturer has to reduce the money it had allocated for incentives to pay for warranty costs as proposed by this bill, the resulting increase in other costs will affect all segments of the automobile market. Incentives help consumers by lowering the price that they pay for a car. Less money for incentives could ultimately result in consumers not being able to afford the type of vehicle that they wanted, or being priced out of a new car purchase entirely.

3. H.B. 2238, Proposed HD1 is unconstitutional.

The Alliance strongly believes that the cost recovery prohibition in H.B. 2238, Proposed HD1 is unconstitutional. In fact, the Alliance filed a lawsuit against the State of Florida challenging very similar language. The suit is currently pending in a federal district court. Cost recovery bars like H.B. 2238, Proposed HD1 are unconstitutional for two reasons: 1) they violate what is commonly known as the Dormant Commerce Clause of the U.S. Constitution, and 2) they violate the U.S. Constitution's Contracts Clause.

H.B. 2238, Proposed HD1 violates the Dormant Commerce Clause because dealers get the benefit of being able to set their higher reimbursement rates, but manufacturers have to cover those costs by shifting them to consumers and dealers in other states. The Alliance feels very strongly that this would be unconstitutional as a matter of law and imprudent as a matter of policy.

In addition to the Dormant Commerce Clause, H.B. 2238, Proposed HD1 also violates the Contracts Clause. The bill improperly interferes with a manufacturer's ability to set its own wholesale prices for its vehicles. That is a very significant intrusion into the manufacturer's business and its contractual franchise arrangements with its dealer. When that intrusion is weighed against the lack of a good reason to interfere with those contracts, the logical conclusion is that H.B. 2238, Proposed HD1 violates the Contracts Clause and is unconstitutional.

Conclusion

While H.B. 2238, Proposed HD1 may be intended to resolve a dispute between a single manufacturer and an automobile dealer, it would cause a significant amount of collateral damage by affecting an entire industry and raising costs. We also believe that the bill is unconstitutional.

For the above reasons, we respectfully request that you hold this measure. Thank you for the opportunity to submit testimony on this bill.

Testimony in STRONG SUPPORT for HB2238
Relating to Motor Vehicles
For Consumer Protection & Commerce Committee hearing
February 27, 2012 2:05pm

Dear Chairs Herkes and Yamane, and members of the Committee:

My name is Stan Masamitsu and I am a franchised new car dealer testifying in STRONG SUPPORT of HB2238. I am a second generation auto dealer and my family has been in the automobile dealership business in Hawaii for almost 35 years. We employ almost 400 people and we currently own and operate 5 dealerships representing the Honda, Nissan, Volkswagen, and Hyundai brands.

In 2010, the Legislature passed an update to H.R.S. Chapter 437 to help family businesses like Tony Group operate on a more level playing field with our multinational manufacturer partners by clarifying the ground rules of the auto franchisee-franchisor relationship so local businesses like ours can better focus on activities that deliver value to our customers and keep our people employed. As the President of the Hawaii Automobile Dealers Association that year, I was part of the team that had worked closely with the Alliance of Automobile Manufacturers and other stakeholders on that particular bill.

Section 56 of HRS437, to account for the higher costs of doing business in Hawaii, the Law requires that the manufacturer pay the dealers the same markup for parts as those of retail customers.

In January 2012, Nissan North America (who is not a member of the Alliance of Automobile Manufacturers) started to assess a surcharge of \$215 per new vehicle invoiced to the Hawaii dealers for a "Warranty Supplemental Expense Charge." Not only does this effectively renders HRS437-56 irrelevant, by this practice Nissan is essentially charging the Hawaii consumer for the additional cost that they incur when THEIR product fails, while the vehicle is still under warranty.

I believe most of our manufacturer partners understand and respect the intent of our State's Law, as Nissan is currently the only manufacturer that I am aware of attempting to recover their warranty parts expenses from the Hawaii market. Sadly, however, this manufacturer practice has been prevalent enough that 13 states had to write in a section in their laws specifically prohibiting surcharges by manufacturers to recoup the cost of warranty parts reimbursement.

I respectfully request your favorable consideration of HB2238 to maintain the integrity of HRS437 which you helped pass in 2010.

Respectfully submitted,



Stan Masamitsu
President, Tony Group

I am FOR proposed HB2238 Proposed HD1: I believe it to be a fair method for all parties concerned. I am, Dan J. Mackey, owner of Kuhio Auto Group with the following franchises: Ford, Mazda, Chevrolet, Cadillac, Hyundai, and Nissan. Currently Nissan manufacture charges \$215.00 per vehicle invoice for "WARRANTY SUPPLEMENTAL EXPENSE CHARGE" This additional charge is then passed on to the consumer as their cost. This is simply OUTRAGEOUS! Nissan is currently the only franchise that I am with that has this charge. I strongly stand for HB2238 Proposed HD1 be passed in hopes that all manufactures dealing within Hawaii be FAIR.

Everyone is still struggling and trying to climb through tough economic times and FAIRNESS is the least that we should be able to expect.

Regards,

Dan J. Mackey

President

I am FOR proposed BH2238: I believe it to be a fair method for all parties concerned. I am, Ryan Mackey, owner of Midpac Auto Center, which has Ford and Mazda franchises. Currently Nissan manufacture charges \$215.00 per vehicle invoice for "WARRANTY SUPPLEMENTAL EXPENSE CHARGE." This additional charge is then passed on to the consumer as their cost. This is simply OUTRAGEOUS! Nissan is currently the only franchise that I am aware of that has this charge. I strongly stand for BH2238 be passed in hopes that all manufactures dealing within Hawaii be FAIR.

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Regards,

Ryan Mackey

Vice President

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Regards,

Dan J. Mackey

President